

# School Discipline



## California Foster Youth Education Task Force

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### INTRODUCTION

Suspensions and expulsions are two types of school discipline. Both are governed by *EC 48900-48927*. A suspension is a short-term removal from school. *EC 48925(d)*. An expulsion is a longer-term removal from an entire school district. *EC 48925(b)*.

In order to lawfully suspend or expel a student, the student's school district must prove that the student committed an act that is both prohibited by the education code and related to school activities or school attendance. *EC 48900(s)*.

#### School Attendance Review Boards

*EC 48320* enhances the enforcement of compulsory education laws and diverts students with school attendance or behavior problems from the juvenile justice system until all available resources have been exhausted. *EC 48321* provides several organizational structures for School Attendance Review Boards (SARBs) at the local and county level to create a safety net for students with persistent attendance or behavior problems. Although the goal of SARBs is to keep students in school and provide them with a meaningful educational experience, SARBs do have the power, when necessary, to refer students and their parents or guardians to court. See <http://www.cde.ca.gov/ls/ai/sb/>

#### Prohibited Acts

The descriptions of prohibited acts appear in *EC 48900*, *48900.2-48900.4*, and *48900.7*. For example, prohibited acts include but are not limited to possession of a weapon, possession of drugs or alcohol, and fighting. Students can be suspended or expelled for many acts, but they should *not* be suspended or expelled for being truant, tardy, or absent from school activities. *EC 48900(w)*.

#### Connection to School

The act must be related to school activities or school attendance in any school district. "Related" includes but is not limited to acts committed on school grounds, while going to or coming from school, during the lunch period (on or off campus), and during or while going to or coming from a school-sponsored activity. *EC 48900(s)*.



### ALTERNATIVES TO DISCIPLINE

While school districts have long had discretion to use alternatives to suspension and expulsion, the California legislature, through AB 1729 (2012), recognized the considerable damage done by the overuse of suspension and expulsion, including lower academic achievement, lower graduation rates, worse overall school climates, and disproportionate impact on certain vulnerable student populations; emphasized the need for effective interventions for problematic student behavior; and clarified the wide scope of discretion school officials have to use school discipline practices other than suspension and expulsion.

Alternatives to suspension and expulsion should be age-appropriate and "designed to address and correct the student's specific misbehavior." *EC 48900(v)*. Other means of correcting inappropriate student behavior can include meetings, case management, counseling, assessments, positive behavior supports, community service, and a variety of programs, such as those that address pro-social behavior, anger management, or restorative justice. See *EC 48900.5(b)* for a full list of recognized alternatives to traditional school discipline.

For most offenses, alternatives are required to have been tried *and* found not to have corrected a student's misbehavior *before* the student can be suspended. *EC 48900.5(a)*.

### SUSPENSIONS

#### Suspension Procedures

A suspension must be preceded by an informal conference unless an "emergency situation" exists. At the conference, the student must be informed of the reason for the disciplinary action and the evidence against them, and be given a chance to present their version and evidence in their defense. *EC 48911(b)-(c)*. An "emergency situation" means a school

administrator has determined that there is "a clear and present danger to the life, safety, or health of students or school personnel." In this situation, the student may be suspended without a pre-suspension conference but must be notified of the right to return to school for a conference to be held within two school days. If the student is unable to attend a conference within two school days, the conference must be held as soon as the student is able to return. *EC 48911(c)*.

At the time of a suspension, the school must make a reasonable effort to contact the student's educational rights holder (ERH) by phone, email, or in person. For foster children, the school must also try to contact the student's attorney and county social worker, and the tribal social worker for an Indian child. *EC 48911(d)*.

In addition, the ERH, attorney, county social worker and tribal social worker must be given written notice of the suspension (*EC 48911(d)*) and may request a meeting with school officials to discuss the cause and duration of the suspension, the applicable school policies, and other pertinent matters. *EC 48914*.

Although a school can request that an ERH, attorney, county social worker and tribal social worker attend a conference to discuss the student's behavior, the school is prohibited from penalizing the student (including by delaying reinstatement in school) for an adult's failure to attend the conference. *EC 48911(ff)*.

#### Limits on Suspensions

Schools generally are required to try other means of correcting a student's behavior before imposing a suspension. Effective July 1, 2020, students in grades K-8 may not be issued an out-of-school suspension for "disruption" and/or "defiance." Furthermore, no student in grades K-12 may be expelled on the basis of "defiance" or "disruption." *SB 419 (2019); EC 48900(k)*.

Since January 2013, it is no longer lawful for a student to be suspended for a first offense on the grounds that the student's presence at school "causes a danger to property or threatens to disrupt the instructional process." *AB 1729 (2012)*. However, a student can be suspended for a first offense if a school administrator determines that the student's presence at school "causes danger to persons." *EC 48900.5(a)*.

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A student can also be suspended for a first offense for certain prohibited acts, such as:

- Caused or threatened physical injury to another person, or willfully used force or violence upon another person except in self-defense;
- Possessed, sold, or otherwise furnished a firearm, knife, explosive or other dangerous object;
- Unlawfully possessed, used, sold, or otherwise furnished or been under the influence of a controlled substance;
- Unlawfully offered, arranged, or negotiated to sell a controlled substance; or
- Committed or attempted to commit robbery or extortion.

*EC 48900.5(a), 48900(a)-(e).*

If a suspension is imposed, it should not, with few exceptions, exceed 5 consecutive school days or 20 days per school year. *EC 48911(a), 48903.*

## Exceptions

A student may be suspended up to 30 total days in a school year if they are enrolled in or transfer to another school for disciplinary reasons. *EC 48903.*

A student who has been recommended for expulsion may be suspended through the time the school board makes its decision on the expulsion. Prior to extending the suspension, the school must hold a meeting to which the student and their ERH have been invited and must determine that the student's presence at school or in an alternative school placement "would cause a danger to persons or property or a threat of disrupting the instructional process." If the youth is a foster student, the school district also must invite the child's attorney and county social worker to this meeting, as well as the tribal social worker for an Indian child. Any decision to extend a suspension in this way must be in writing. *EC 48911(g).*

## School Work Missed During Suspension

A student may be required to complete assignments and tests missed during the suspension. *EC 48913.* School work should be requested from the school for the student to complete while out of school on suspension.

Effective January 1, 2020, upon the request of the student, parent/guardian or ERH, a teacher must provide any student in grades 1-12, who has been suspended from school for two or more school days, the homework that they

would otherwise have been assigned.

If a homework assignment that is requested and turned in to the teacher by the due date or when the student returns from suspension, whichever is later, is not graded before the end of the academic term, that assignment cannot be included in the student's overall grade in the class. *AB 982 (2019); EC 47606.2, EC 48913.5.*



## Supervised Suspension Classroom

Some suspensions may be served in a supervised suspension classroom rather than off school grounds. The classroom or school must promote completion of schoolwork and tests the student misses during the suspension and make appropriate counseling services available. The school must notify the student's ERH, attorney, and county social worker, and if applicable, tribal social worker, at the time it assigns the student to the suspension classroom. The notice must be in writing if the student will be in the suspension classroom for longer than one class period. *EC 48911.1.* In most cases, supervised suspension, like out-of-school suspension, should be used only when other means of correction fail to bring about proper conduct. *EC 48900.5(a).*

## EXPULSIONS

### Discretion Not to Expel

For most acts that violate the education code, school officials have discretion to not recommend expulsion, and the governing board has discretion to not expel. They can decide that expulsion would be inappropriate under the circumstances. *EC 48915(a)-(b), (e).* School officials should determine whether they are recommending expulsion "as quickly as possible" so that a student does not lose instructional time. *EC 48915(a)(2).*

### Mandatory Recommended Expulsions

The law requires recommendation for expulsion for a small category of acts. Those acts are firearm offenses (but not possession of an imitation firearm), brandishing a knife at

another person, selling controlled substances, committing or attempting to commit sexual assault or battery, and possessing an explosive. *EC 48915(c).*

## Expulsion Procedures

A student who is recommended for expulsion has due process rights. They include:

- The right to a hearing held within 30 school days of the date a school official determined the student committed the act, unless the student makes a written request to postpone the hearing. The student has a right to at least one 30-day postponement and can ask for more. *EC 48918(a).*
- The right to receive written notice of the hearing, to be sent by the school district at least 10 calendar days before the hearing. The notice must include the date and place of the hearing, a statement of the specific facts and charges that are the basis for the expulsion recommendation, a copy of the district's disciplinary rules, and a list of the student's and ERH's rights. *EC 48918(b).* If the student is a foster student, the school district also must provide the hearing notice to the student's attorney and county social worker, and if applicable, tribal social worker, at least 10 calendar days before the date of the hearing. *EC 48918.1(a), (c).*
- The right to bring a lawyer or other advocate to the hearing. *EC 48918(b)(5).*
- The right to receive copies of the documents that will be used at the hearing, to question all witnesses and evidence at the hearing, and to bring their own witnesses and evidence to the hearing. *EC 48918(b)(5).*
- The right to ask the governing board to subpoena witnesses. *EC 48918(i).*
- The right to receive the governing board's written decision on the expulsion recommendation within 10 school days of the hearing or, in some situations, within 40 school days of the beginning of the suspension for the incident in question. *EC 48918(a).*
- If expelled, (1) the right to receive notice of the right to appeal, and (2) the right to be educated while expelled. *EC 48918(j), 48916.1.*

In addition, for mandatory recommended expulsions involving foster students, the school district must provide written notice of the hearing to the student's ERH, attorney, and county social worker and, if applicable, tribal social worker at least 10 calendar days before

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the date of the hearing. The notice may be provided by email or by phone. *EC 48918.1.*

## Necessary Findings

Generally, in order to expel a student, a governing board must do the following things:

- Ensure that the student’s due process rights, including timelines and procedures, were not violated.
- Find that the student committed a prohibited act that was related to school activities or school attendance.
- Except in the case of mandatory recommended expulsions, find one or both of the following:
  - Other means of correction are not feasible or repeatedly have failed to bring about proper conduct.
  - Due to the nature of the act, the student’s presence causes a continuing danger to the physical safety of the student or others. *EC 48915(b), (e).*

## Appeals

If a governing board orders expulsion, the student has up to 30 days from the date of the expulsion decision to appeal to the county board of education. *EC 48919.* There are limited grounds for appeal (e.g., whether the hearing was fair, whether relevant evidence could not be produced or was excluded improperly) and many rules that must be followed in the appeals process. *EC 48919-23.* There are no other administrative appeals above the county board of education level. *EC 48924.* Any further appeal must be pursued in court.

## Education During Expulsion

The school district must ensure that an educational program is provided to an expelled student for the entire period of the expulsion. *EC 48916.1, 48915(f).* The written expulsion decision must specify the alternative educational placement. *EC 48918(j)(2).*

## Rehabilitation Plan

At the time of expulsion, the governing board also must recommend a rehabilitation plan, which will be considered when the student applies for readmission to the district. The plan may include recommendations for improved academic performance, tutoring, special education assessments, job training, counseling, employment, community service, and other rehabilitative programs. *EC 48916(b).* For expulsions related to controlled substances or alcohol, the school board may require, with

parent/ERH consent, enrollment in a drug rehabilitation program. *EC 48916.5.*

## Readmission After Expulsion

An expulsion order remains in effect until the school district orders readmission. The date when a student must be considered for readmission to the district must be set by the governing board at the time of the expulsion decision. The date must be *no later than*:

- For mandatory expulsions, one year from the date of the expulsion.
- For non-mandatory expulsions, the last day of the semester following the semester in which the expulsion occurred.
- For non-mandatory expulsions during summer sessions or intersessions of year-round programs, the last day of the semester following the summer session or intersession in which the expulsion occurred.

The governing board may set a date earlier than these maximum time periods. *EC 48916(a).*

A student should follow the district’s rules and procedures for requesting readmission, which should be provided at the time of the expulsion decision. After the process is completed, the governing board must readmit the student unless it finds that the student either failed to complete the rehabilitation plan or “continues to pose a danger to campus safety or to other pupils or employees of the school district.” *EC 48916(c).*

If readmission is denied, the governing board must provide written notice of the reason(s) for the denial and offer the student an educational program. *EC 48916(d)-(e).*

## Enrollment in Another District

A student may apply for enrollment in another school district during the period of expulsion. An expelled student must disclose the ongoing expulsion at the time of enrollment. Certain procedures must be followed, including a hearing to determine whether the student poses a danger to students or staff of the new district. Enrollment is not guaranteed, and any enrollment that is permitted may be limited to certain types



of educational programs or dependent on specified conditions. *EC 48915.1-2.*

## Suspended Expulsions

A governing board can decide to expel a student but suspend enforcement of the expulsion order. A “suspended expulsion” is an actual expulsion that puts a student on probationary status and allows them to enroll in an educational program deemed appropriate by the school board to rehabilitate the student. *EC 48917(a), (c).* If the student violates any behavioral rules during the probationary period, the school board can revoke the suspension and expel the student under the terms of the original expulsion order. *EC 48917(d).*

If the student satisfactorily completes the rehabilitation program, they must be reinstated in a district school, and the governing board may order the expulsion records to be expunged. *EC 48917(e).*

A governing board’s decision to suspend enforcement of an expulsion order does not affect the timeline for appealing the expulsion to the county board of education. If a student wishes to appeal the expulsion, they must do so within 30 days of the expulsion decision regardless of whether the expulsion order is suspended; otherwise, they lose the right to appeal. *EC 48917(f).*

## STUDENT INTERROGATIONS BY LAW ENFORCEMENT

All youth under the age of 18 must consult with an attorney in person, by telephone, or by video conference prior to a custodial interrogation or waiver of Miranda Rights. The consultation may not be waived. *WIC 625.6(a).* This applies to custodial interrogations on campus by law enforcement officers (including school resource officers) as well as interrogations off campus. Law enforcement agencies are required to ensure that youth consult with an attorney in private. During this confidential consultation, the attorney will explain the youth’s rights to them. The attorney consultation requirement does not apply to probation officers in the normal performance of their duties. *WIC 625.6(d).*

## INVOLUNTARY TRANSFERS

In some situations, a student may be transferred against the wishes of their ERH to the school district’s continuation school or community day school for reasons that may or may not be related to school discipline. Specific procedures for and rights related to involuntary transfers must appear in the school district’s written policies. *EC 48432.5, 48662.*



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## Involuntary Transfer to Continuation Schools

A school district may transfer a student who is at least 16 years old to its continuation school for certain prohibited acts or for habitual truancy or attendance problems. Prior to the transfer, the student and their ERH, attorney, and county social worker, or if the student is an Indian child, their tribal social worker, are entitled to written notice and a hearing to discuss the reason(s) for the proposed transfer and to present and question relevant evidence and witnesses. None of the people involved in the final involuntary transfer decision shall be staff of the school where the student is enrolled. A student should not be transferred involuntarily unless other means have been tried and have failed to improve the student's conduct or unless the student committed a prohibited act and their "presence causes a danger to persons or property or threatens to disrupt the instructional process." A final transfer decision must be in writing and may be subject to periodic review. A transfer generally should not extend past the semester following the semester in which the act(s) leading directly to the transfer occurred. *EC 48400; 48432.5.*

## Voluntary Transfers to Continuation Schools

Different laws, policies, and procedures apply to voluntary, as opposed to involuntary, transfers to continuation schools, including the requirement that the decision to voluntarily transfer a student must be in their best educational interest as determined by their ERH and that voluntary transfers not be used as an alternative to expulsion unless alternative means of correction have been attempted pursuant to *EC 48900.5* and *48432.3.*

## Transfer to Community Day Schools

A school district may transfer a student to its community day school if the student has been expelled, has been referred by probation under the California Welfare & Institutions Code, or has been referred to the community day school by a school attendance review board or other district-level referral process. *EC 48662.*

## SCHOOL DISCIPLINE NOTICES FOR FOSTER CHILDREN

A foster child's ERH, attorney, and county social worker, and an Indian child's tribal social worker, have the same rights as a parent has to receive school discipline notices, documents and related information. *EC 48853.5(d).* This includes notice of:

- All suspensions, including in-school suspensions. *EC 48911(d), 48911.1(d).*
- Any meeting to determine whether a suspension will be extended until a decision is made on an expulsion recommendation. *EC 48911(g).*
- Any expulsion hearing. *EC 48918.1.* Notice should be provided at least 10 calendar days before the date of the hearing.
- Any meeting of an Individualized Education Program (IEP) team to make a manifestation determination decision. *EC 48915.5(d).*
- Any involuntary transfers. Notice should provide opportunity to request a meeting with the designee of the district superintendent before the transfer. *EC 48432.5(b).*
- Any plans to involuntarily remove a foster child from a charter school. Written notice must be provided no less than 5 school days before the effective action. *EC 47605(c)(5)(I)(iii), 47605.6(b)(5)(I)(iii).*

To facilitate communication between school districts and foster children's attorneys, the attorneys (or their law firm or organization) must provide their contact information at least once a year to the educational liaisons of each local educational agency (LEA) serving their clients in the county of court jurisdiction.

In addition, a foster child's caregiver or ERH may provide the attorney's contact information to the LEA. *WIC 317(e)(4).*

## DISCIPLINE RECORDS

A student's ERH has a right to add to the student's school record a written statement or response to any disciplinary action that appears in the student's file. *EC 49072.*

## Amending a Student's Record After Improper School Suspension

If a student is improperly suspended from school (e.g., based on failure to provide notice or failure to hold a conference), the student's ERH can request to amend their school records. *EC 49070.*

## STUDENTS WITH DISABILITIES

Protections in the Individuals with Disabilities Education Act (IDEA) apply to students who have been found eligible for special education services and to students for whom the school is deemed to have knowledge that the child might have a disability (i.e., students who have not yet been found eligible, but the school had knowledge of a disability, including students who have been referred for initial evaluation). *34 CFR 300.534.* If a request for a special education evaluation is

made before the disciplinary period, the assessment must be completed, an Individualized Education Program (IEP) meeting held, and a manifestation determination IEP held before further discipline can be instituted. If a request for a special education evaluation is made during the disciplinary period, it must be conducted in an expedited manner. *20 USC 1415(k)(5)(D)(ii); 34 CFR 300.534(d)(2).* Students who do not fall into these categories may be disciplined as students without disabilities. *20 USC 1415(k)(5)(D); 34 CFR 300.534(d).*

## NOTICE OF DISCIPLINARY ACTION

A student's ERH is entitled to be notified of an LEA's decision to take disciplinary action and of their procedural rights on the same day the decision is made. *20 USC 1415(k)(1)(H); 34 CFR 300.530(h).*



## 10-DAY THRESHOLD

A student with a disability who violates a code of student conduct may be removed from their current educational placement to an appropriate "interim alternative educational setting," other setting, or may be suspended for up to 10 school days, so long as similar disciplinary measures are taken against students without disabilities. *20 USC 1415(k)(1)(B); 34 CFR 300.530(b).*

School personnel can consider any unique circumstances on a case-by-case basis when determining whether to change the placement of a student with a disability who violates a code of student conduct. *20 USC 1415(k)(1)(A); 34 CFR 300.530(a).*

A "change of placement" of more than 10 school days could result from an extended suspension of more than 10 consecutive school days, pending an expulsion hearing; a pattern of suspensions or removals of more than 10 school days in a school year, based on similar behavior; or placement in an "interim alternative educational setting" (see below); or an expulsion. *See 34 CFR 300.536.*

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If an LEA wants to change the placement of a student with a disability for more than 10 school days because of a violation of a code of student conduct, it must convene an IEP meeting to make a “manifestation determination.” The meeting must be held within 10 school days of the LEA’s decision to seek the change in placement. *20 USC 1415(k)(1)(E); 34 CFR 300.530(e)*. If the youth is a foster student (as defined in *EC 48853.5*), the LEA must invite the student’s ERH, attorney and county social worker to participate in the meeting. *EC 48915.5(d)*. The LEA also must invite the tribal social worker if the foster student is an Indian child. *EC 48915.5(f)*.

After a student with a disability has been removed from their placement for more than 10 school days in the same school year, they are entitled to a free appropriate public education (FAPE) during any subsequent days of removal. *34 CFR 300.530(b)(2)*.

## INTERIM ALTERNATIVE EDUCATIONAL SETTING (IAES)

A school may move a student with a disability to an IAES for no more than 45 school days, regardless of whether the conduct was a manifestation of the student’s disability, if the student, in connection with a school activity, has a weapon; knowingly has, uses, sells, or solicits the sale of a controlled substance; or inflicts serious bodily injury upon another person. Serious bodily injury has been interpreted in case law to require a very serious injury including maiming. Injuries that do not require hospitalization are often found to not meet this standard. *20 USC 1415(k)(1)(G); 34 CFR 300.530(g); see 20 USC 1415(k)(7) (defining these violations); 34 CFR 300.530(i)*.



## MANIFESTATION DETERMINATION

At the manifestation determination meeting, the IEP team must consider all relevant information to determine whether the conduct in question (1) was caused by, or had a direct and substantial relationship to, the student’s disability or (2) was the direct result of the LEA’s failure to implement the student’s IEP. If the answer to either item is “yes,” the conduct is considered to be a manifestation of the student’s disability. *20 USC 1415(k)(1)(E); 34 CFR 300.530(e)*.

### Finding of Manifestation

If the IEP team finds that the student’s behavior was a manifestation of their disability:

- A functional behavioral assessment (FBA) must be conducted, if one has not already been done. (See the Special Education Fact Sheet.)
- A behavioral intervention plan (BIP) must be developed and implemented or, if one already exists, reviewed and modified to address the behavior.
- The student must be returned to the placement from which they were removed, unless the IEP team (including the ERH) agrees to a change of placement as part of the BIP or the student was moved to an “interim alternative educational setting.” *20 USC 1415(k)(1)(F)-(G); 34 CFR 300.530(f)-(g)*.

If the IEP team finds that the student’s conduct was the direct result of the LEA’s failure to implement the IEP, the LEA must take immediate steps to remedy the deficiencies. *34 CFR 300.530(e)(3)*.

### Finding of No Manifestation

If the IEP team finds that the student’s behavior was not a manifestation of their disability:

- The school may discipline the student in the same manner and for the same duration as it would a student without disabilities.
- The student must continue to receive Free Appropriate Public Education (FAPE), enabling the student to participate in the general education curriculum and progress toward their IEP goals.

- The student must receive, as appropriate, a Functional Behavioral Assessment (FBA) and Behavior Intervention Services (BIS) and modifications that are designed to address the behavior violation so that it does not recur. *20 USC 1415(k)(1)(C)-(D); 34 CFR 300.530(c)-(d)*.

### IEP Team Disagreements

Any disagreement related to the manifestation determination or placement may be resolved through an expedited due process hearing, which must be held within 20 school days of a request. The hearing officer can return the student to the placement from which they were removed or temporarily place the student in an appropriate “interim alternative educational setting” (IAES). Pending the hearing decision, a student who was placed in an IAES must remain in that setting unless the placement expires (no more than 45 school days) or the IEP team agrees otherwise. *20 USC 1415(k)(3)-(4); 34 CFR 300.532-300.533*. The setting must be determined by the IEP team. *20 USC 1415(k)(2); 34 CFR 300.531*.

Students in these settings have the same rights to FAPE, an FBA, and BIS as students for whom no manifestation was found. *20 USC 1415(k)(1)(D); 34 CFR 300.530(d)*.



## REFERRAL TO LAW ENFORCEMENT

An LEA that reports a crime committed by a student with a disability must ensure that copies of the student’s special education records are transmitted to the law enforcement authorities to whom the crime is reported. *20 USC 1415(k)(6)(B); 34 CFR 300.535(b)*.